



# Legislative Research Council

# MINUTES

## Domestic Abuse Study

Senator Deb Soholt, Chair  
Representative Mike Stevens, Vice Chair

Second Meeting  
2013 Interim  
August 1, 2013

Room 413  
State Capitol  
Pierre, South Dakota

### Thursday, August 1, 2013

The second meeting of the Domestic Abuse Study Committee was called to order by the Chair, Senator Deb Soholt, at 10:00 a.m. in Room 413 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Deb Soholt, Chair; Representative Mike Stevens, Vice Chair; Senators Deb Peters (via telephone), and Craig Tieszen; and Representatives Jim Bolin, Kristin Conzet, Peggy Gibson, and Karen Soli. Excused: Representative Tona Rozum.

Staff members present included Amanda Reiss, Legislative Attorney; Reuben Bezpaletz, Chief Analyst for Research and Legal Services; and Cindy Tryon, Legislative Secretary.

*(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")*

### Approval of Minutes

**REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE CONZET TO APPROVE THE MINUTES OF THE JUNE 17, 2013, MEETING. The motion prevailed unanimously on a voice vote.**

### Opening Remarks

**Senator Deb Soholt**, Committee Chair, reviewed the scope of this committee which is, "A comprehensive review of Domestic Abuse in South Dakota. The focus of this study will include: a) a review of current state and federal regulations; b) an examination of the effectiveness of state policies and programs with respect to domestic abuse; c) a study of the prevalence of domestic abuse across the state, including related crimes; and d) a discussion of potential options with respect to domestic abuse statutes in South Dakota." Senator Soholt also reviewed the importance of staying within the defined scope of study which does not include the causes of domestic abuse, the rehabilitation phase, or issues of child custody..

**Ms. Amanda Reiss, Legislative Attorney, Legislative Research Council**, presented information regarding operational definitions for the terms "domestic abuse" and "domestic violence" (**Document #1**). Ms. Reiss said that the terms "domestic abuse" and "domestic violence" are often used interchangeably. She said that different organizations have their own definitions of either one or both of these phrases. The document that Ms. Reiss distributed gives several of those definitions.

Ms. Reiss pointed out that when gathering domestic abuse statistics, the information may vary based on the definition the organization uses. Differences in definitions can also have a major affect when interpreted for judicial purposes. She added that the courts appreciate consistency in terms and definitions. Ms. Reiss said that the definition of domestic abuse may also affect any legislation this committee may consider drafting.

Domestic abuse is defined in SDCL 25-10-1(1) *“Domestic abuse,” physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members. Any violation of SDCL 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between family or household members.*

**Senator Craig Tieszen** said that the phrases domestic abuse and domestic violence are interchanged within South Dakota statute, citing SDCL 25-10-17.1 as an example.

**Representative Mike Stevens** asked if South Dakota statute defines domestic abuse but not domestic violence. Ms. Reiss said that is correct.

Senator Soholt commented that the committee may want to clarify these terms in statute.

### **SD Network Against Family Violence and Sexual Assault**

**Ms. Krista Heeren-Graber, Executive Director, South Dakota Network Against Family Violence and Sexual Assault (The Network)**, gave a PowerPoint presentation on domestic abuse in South Dakota (**Document #2**). Ms. Heeren-Graber said that she has worked in this field for 26 years. She said that because of the long title of this agency, they are referred to simply as The Network.

Ms. Heeren-Graber shared that keeping victims safe and holding perpetrators accountable is a coordinated effort. Domestic violence is about power and control, it is not about anger. She said that marriage counseling is typically not recommended in these situations because it is not a relationship issue, but a power and control issue.

Ms. Heeren-Graber said that The Network provides training to law enforcement personnel. In the past 12 months, 606 participants attended 28 training sessions held throughout South Dakota. The training includes domestic violence dynamics, officer safety, protection orders, stalking, sexual assault, elder abuse, strangulation, and much more.

The Network receives funding from private donors that is used to provide assistance to victims. That assistance can come in the form of bus tickets, gas cards, hotel/motel rooms, food, etc. From May 2012 through January 2013, 62 victims and 99 of their children received assistance from The Network. Of those victims, one was male and all others were female. Ms. Heeren-Graber said that The Network's shelters, located across South Dakota, are close to full capacity at all times.

Senator Soholt asked Ms. Heeren-Graber if the language in statute is problematic because of the physical harm requirement. Ms. Heeren-Graber said that it can be an issue.

Senator Tieszen said that the statute is mislabeled and should say domestic violence rather than domestic abuse, then the imminent physical harm reference would be appropriate.

Representative Stevens said that a definition that is too specific can be difficult to enforce. He said that the use of the words pattern or cycle would be up for interpretation, and that the committee needs to be sure they do not open a door that shouldn't be opened.

**Representative Kristin Konzert** asked if South Dakota has a definition in statute for Intimate Partner Violence (IPV). Ms. Heeren-Graber said that we do not. **Senator Deb Peters** said that she had introduced legislation to define IPV but it did not pass because some thought it was trying to redefine marriage.

Ms. Heeren-Graber stated the importance of defining IPV in order to have an impact on prevention and intervention efforts. The definition is needed to make sure data is measured and maintained accurately. Ms. Heeren-Graber said that both North Dakota and Nebraska have definitions of IPV in statute.

**Representative Jim Bolin** asked about the roommate situation and if a fight between roommates could be considered domestic abuse. Ms. Heeren-Graber said that theoretically it could but that she had never heard of that happening.

Senator Tieszen shared that South Dakota's domestic abuse laws do apply in roommate situations and was actually used in prosecuting some cases in Rapid City. He added that at some point that problem needs to be corrected.

Senator Soholt said that the current definitions in statute may need to be looked at for changes so that South Dakota is a safe, fair and just state for all citizens.

Ms. Heeren-Graber said that she had been asked to share some of her concerns about domestic abuse in South Dakota. She said that law enforcement response time is slow if the distance they have to travel is remote. She said that if no arrest is made in a domestic violence situation the offender can continue to possess firearms. She said that more funding is needed for victim services and offender treatment and the state's share of funding has not increased since 1990. She said small shelters and crisis centers struggle even more because of the rural remote isolation and a very limited staff.

**Representative Peggy Gibson** said that she had been told that a new challenge for these programs is that the rules on how money can be spent are stricter. Ms. Heeren-Graber said that with most of the government funding, the Department of Social Services would be the grantor and they have been more than accommodating in working with the agencies to address those issues. Ms. Heeren-Graber said that administrative work can be very complicated and time consuming. She added that collecting the proper data in the proper format is very important for these agencies to continue to receive funding.

Senator Soholt suggested that there may need to be a clear definition in statute to assist in keeping statistics and reporting data.

Representative Bolin shared that there are a wide variety of cultures in Sioux Falls that have varying beliefs about male-female relationships. He asked how The Network addresses that issue. Ms. Heeren-Graber said that this issue is a challenge. The Network works with Lutheran Social Services' immigration program and The Network does have a part-time immigration attorney who assists with some of these issues. She said that they are as culturally sensitive as possible and that they make every attempt to meet the needs of every victim, no matter what his or her culture. One added challenge with the victim from a different culture is that they can be very isolated within their own community, because the culture may not approve of their seeking help.

Representative Gibson said that they have different cultures in Huron as well and another issue that may arise is that the victim is not a citizen. Representative Gibson asked how they address that issue at The Network. Ms. Heeren-Graber said that their immigration attorney deals with those situations.

Representative Stevens asked about the male-female ratio regarding the victims. Ms. Heeren-Graber said that it is about 85% women and 15% men. She said that they work with more males now than in the past and she is not sure why that is. She added that the dynamics in a same-sex relationship are much different than in a heterosexual relationship.

**Representative Karen Soli** said that materials used in domestic violence classes regarding violence against men are much different than the materials used in domestic violence classes regarding violence against women.

Representative Stevens asked if the definitions in statute regarding domestic abuse were changed, would that increase the number of court proceedings. Ms. Heeren-Graber said that she believed there would be an increase but could not comment on how much.

### **South Dakota Second Circuit Court**

**Judge Pat Riepel, Judge Susan Sabers, and Circuit Administrator Karl Thoenness, Second Circuit Court**, joined the committee meeting via audio conferencing to talk about protection orders. Judge Riepel said that when someone applies for an abuse protection order they often request a stalking order because they do not know the difference. The Judge said it would make more sense to have the option of an abuse or stalking order on one application form and let the judge select which order to grant. She said that she believes it would take legislative action to make that possible. She said doing so would make the protection order process a little more seamless for those in need of protection but not familiar with the court system.

Judge Riepel said that a petitioner comes to court and the judge listens to both sides before granting or denying the petition. If the judge grants the petition, he or she must write out the reasons why. Judge Riepel said that there is not enough space on the form to write out the ruling and the reasons. She said that in the Second Circuit Court they have added a second page that gives the judge enough room to put in that information. She said that the determining factors are very important for the next judge to have available for moving into the next phase of the case.

Judge Riepel said that there is also a problem with getting information about stalking protection orders disseminated to law enforcement, while they receive the domestic abuse protection orders much more quickly. She said that there seems to be some type of disconnect when figuring out who needs to receive which information. She said that it is very important to clarify the difference between a stalking protection order and a domestic stalking order.

Judge Riepel said that Odyssey is the computer program judges use to pull up information regarding cases. She said that at this time, protection orders are not placed into the Odyssey program, but that will be changing in the next month or so and that will be a big help.

When asked to describe what it is like to hear protection order petitions, Judge Riepel said that they hear these cases from 1:30 to 5:00 and they are usually very difficult. She said there is so much emotion and so many people in the courtroom that it is normally four and a half hours of anger and confusion. She said these cases are very draining for everyone involved, including the judge.

Judge Sabers asked the committee to compare the definition of domestic abuse in SDCL 25-10-1 with the definition of stalking in 22-19A-1. She said that if a mom comes before her seeking a protection order against a violent husband it is obvious that the domestic order applies. But, if a 25 year old boyfriend is beating up his 22 year old girlfriend, neither protection order applies. He is not stalking her, he's punching her; and domestic does not apply because he does not live with her nor have a child with her. The judge said they need another option for these situations and she asked the committee to take

a look at the definitions and see how they fit or don't fit together. The judge said that at this time there are no tools available to them when dealing with these "other" relationships and this committee should take a look at helping solve that problem.

Representative Gibson asked if, in that scenario, the boyfriend could be charged with assault and would the judge then be able to grant a protection order. Judge Sabers said that judges do not all agree, but current law would not apply in this situation regarding the protection order – criminal charges do not give the judge authority to grant a protection order. She added that if the perpetrator serves 30 days, what happens when he/she gets out of jail, if there is not an order to protect that victim.

Representative Stevens asked about abuse of the protection order process. Judge Sabers said the most troubling abuse of the system is when a parent applies for a protection order just to help his or her battle to get custody of the children. The protection order hearings should not be involved in determining "the best interest of the child", that should be heard in family court. And yet, the Judge said, parents routinely turn to the protection order court making this one of the biggest misuses of the system. She added that she is not sure there is a legislative fix for that problem.

Mr. Thoenness said that there are competing cases of requests for protection orders that makes tracking complex. He said that, as of August 29, 2013, protections orders will be made available electronically and that will make tracking the orders much easier.

Mr. Thoenness said that the forms and data distribution is very complex, especially when crossing over different jurisdictions and especially when more than one state is involved. He said that court administrators have tried to design a uniform system nationally, but to no avail. He said that it is very difficult to get the information out there regarding protection orders when dealing with these issues across state lines. He said that even having one form for all to use statewide would be a big help.

Mr. Thoenness said they hear about 1700 requests for protection orders per year and about 80% of those end up being dismissed by the requesting party. He said they hear 12 – 15 cases each afternoon in three different blocks.

When asked about minors, Mr. Thoenness said that the judges handle those on a case by case situation. He said that a grandparent may complete the form on behalf of the child or the judge may appoint an attorney or guardian to work with the minor child.

### **Pennington County Victim's Services**

**Ms. Sharon Kallemeyn, Director, Pennington County Victim's Services, Rapid City**, said that there are five counties currently that have the Victim's Services program available. Those counties are Minnehaha, Beadle, Brookings, Hughes, and Pennington. In addition to those programs, there are three victim witness assistants with the Department of Criminal Investigation (DCI).

Ms. Kallemeyn said that 95% of the victims she works with are women with only 5% of the victims being men. She said 60% of children who are being abused are growing up in a domestic violence home. She said 80% of criminals grew up in homes where domestic violence occurred. Ms. Kallemeyn said that nationwide \$12.6 billion is lost every year because of domestic violence, based on lost wages, emergency response personnel, hospital charges, doctor bills, and all other such related costs.

Ms. Kallemeyn said that victims of crimes are looking for a way back to a new normal. She said safety and security are paramount as to what those victims need. She said that Pennington County has a

wonderful care team, law enforcement officers, who work with her office. She said law enforcement will assign a special patrol unit to drive by a victim's home, helping the victim feel more secure.

Ms. Kallemeyn said that the mandatory arrest law was a tremendous help and that law tells victims and perpetrators that domestic abuse is a horrible thing and will be punished.

Ms. Kallemeyn said some of the things her agency does for the victims are: advise, help them to better understand the judicial system, explain complicated legal terms, accompany them to court, help them understand what happened in court and what will happen next, and explain the crime victim's compensation program.

Ms. Kallemeyn said that the process for getting a protection order is complex. She said that they help prepare no-contact orders every day and that her office will tell a victim that if the perpetrator does not live in the house, then a stalking order must be applied for rather than domestic. She said that in Pennington County, the victim can choose on the application form which type of protection order they are requesting. Ms. Kallemeyn said that the no-contact orders can be in effect throughout the timeframe of the case. She said that if an offender is in prison and he or she tries to contact the victim, Ms. Kallemeyn's office will call the prison and get them to put a stop to any future calls.

Senator Tieszen asked Ms. Kallemeyn what she would like to see the committee do regarding domestic abuse. Ms. Kallemeyn said that the addition of strangulation to the assault law passed by the Legislature has been a big help. She said one of the challenges they face is when a couple has never lived together but the young woman is pregnant and the boyfriend is beating her. The victim cannot get a protection order because they do not live in the same house. Ms. Kallemeyn said that there needs to be a way to protect people in these situations, too. She added that the college roommate relationship should not be in the domestic abuse definition.

Representative Bolin asked Ms. Kallemeyn to comment on recidivism as it applies in domestic abuse cases. Ms. Kallemeyn said that in at least a third of the cases they work with the perpetrator is a repeat offender. Ms. Kallemeyn said that her hope is that through treatments available in South Dakota, offenders will be able to stop their criminal behavior. However, she said that even though treatment today is better than it was, no treatment can be designed to help everyone.

### **Turner County Sheriff's Office**

**Mr. Byron Nogelmeier, Turner County Sheriff, Parker**, said that he has been in law enforcement in Turner County for 31 years. He said that they average 14–18 domestic violence arrests per year in Turner County. He said most incidents happen in the evening and occur within a municipality. Sheriff Nogelmeier said that many cases, up to 70% of them, are alcohol or drug related.

Senator Tieszen asked Sheriff Nogelmeier for his thoughts on the mandatory arrest law. Sheriff Nogelmeier said that when it first became law there was some confusion but that it is easy to understand the need and the reason behind the law. Sheriff Nogelmeier said that law enforcement is required to go through domestic training every four years and that is very helpful.

Senator Soholt asked the Sheriff if he sees much misuse of temporary protection orders. Sheriff Nogelmeier said that he thinks it does happen but the judge in his area does not grant protection orders as freely as may have been the case in the past. Protection orders can create confusion for law enforcement officers in some situations. There is a lot of confusion around the surrendering of weapons because the federal government says the perpetrator is banned for life from possessing a weapon, but that state law provides for a limited restitution of gun rights.

## **SD Association of Criminal Defense Attorneys**

**Mr. Ryan Kolbeck, President, South Dakota Association of Criminal Defense Attorneys, Sioux Falls**, commended the committee for addressing this issue. Mr. Kolbeck said that the committee exposing themselves to what happens in the real world regarding the legal issues of domestic abuse is a great way to learn how to best address those issues.

Mr. Kolbeck distributed copies of SDCL 22-18-1 and SDCL 22-18-1.1 which are the definitions of simple assault (misdemeanor) and simple assault (felony) (**Document #3**). Mr. Kolbeck said that definitions in law are vital and if an offense is found in the definition the offender will be charged.

Mr. Kolbeck said that the laws are often interpreted by the judge as not allowing to make any modifications in protection orders once the order is issued. There are many times that a situation no longer works but the judge has no authority to modify the terms.

Mr. Kolbeck said that there has to be some type of amnesty available to allow people to report domestic violence. He said the victim should be able to contact law enforcement without the fear of getting arrested on some outstanding warrant. This immunity should not apply to felonies, but it should apply to most misdemeanors.

Mr. Kolbeck said that when it comes to the mandatory arrest for domestic abuse, it can be difficult to determine who the predominate offender is in a mutual fight. Law enforcement is forced to make that determination in order to make an arrest. That situation can also lead to a one-sided investigation based on who was arrested. Law enforcement may need more time before making an arrest. And, once someone is arrested with a domestic tag, the federal laws kick in no matter what happens after the arrest. There are lifetime consequences to any arrest for a domestic violence charge no matter what the outcome. There has to be some type of pre-arrest option available where law enforcement can do a separation of participants without making a formal arrest.

Mr. Kolbeck said that he has experience with working both sides of the protection order process. Mr. Kolbeck distributed a copy of the application for a protection order that is used in Minnehaha County (**Document #4**). He said that at times the petitioner will contact the respondent and if the respondent answers the phone call he or she is actually breaking the law. Petitioners sometimes do this to entrap the respondent. In some situations, the petitioner and respondent will get back together and then as soon as there is an argument, the petitioner will call law enforcement stating that the protection order has been broken. Mr. Kolbeck said that these types of situations lead to the need for some type of affirmative defense for those individuals who do break a protection order, that technicalities such as those mentioned should be allowed to be heard in court.

Senator Tieszen said that he understands Mr. Kolbeck on this issue and perhaps some type of affirmative defense in situations where the petitioner entices the respondent to violate the protection order should be considered.

Mr. Kolbeck also pointed out that with the passage of SB70 this past session, preliminary hearings were done away with in some instances. Mr. Kolbeck said that there should be an amendment to that law bringing back preliminary hearings in these instances. Senator Tieszen said there is merit to having preliminary hearings in some of these cases.

## **Review Past Legislation**

Ms. Reiss distributed a list of legislation regarding domestic abuse that had been drafted but failed to pass (**Document #5**). One such piece of legislation was SB 141 which was introduced in 2012 and was an attempt to define domestic abuse. Senator Peters was one of the sponsors. Senator Peters shared that this piece of legislation failed because some legislators saw it as a way to change the definition of marriage.

Representative Bolin said that perhaps it is time to try to write a new definition for domestic abuse without including same sex relationships. He is concerned that a definition that includes same sex-relationships may inhibit the passage of a larger piece of legislation

Representative Gibson said that it is important to protect all people and not exclude any particular group just because of sexual preference. Representative Gibson shared that it is the duty of all legislators not to discriminate. In addition, discrimination also jeopardizes federal funding that is so vital to the organizations who work with domestic abuse cases.

Senator Tieszen said that SB 147 was drafted to amend the definition of family or household members and failed during this past legislative session. Senator Tieszen said that it is important to address the issue of college roommates as that phrase being included in the statute demeans the purpose of the definition of domestic abuse. Senator Tieszen added that SB 147 was sex neutral and all people are entitled to protection under the law.

Representative Soli said that she would like to see the failed legislation from 2012 (SB 141) be rewritten to include dating relationships and to remove “of the opposite sex” to keep it gender neutral.

Senator Sohlt said that the committee has a lot more input to hear before deciding just where they need to go as far as drafting legislation. She did say that they are at a point of being able to direct the staff to draft something regarding the definitions the committee has discussed.

**REPRESENTATIVE GIBSON MOVED, SECONDED BY SENATOR TIESZEN, TO DIRECT THE LRC STAFF TO DRAFT POTENTIAL LEGISLATION REGARDING DEFINITIONS NEEDED BY THE COURTS WHEN HEARING DOMESTIC ABUSE CASES. The motion prevailed with 5 voting AYE, 1 voting NAY, and 3 EXCUSED. Those voting AYE: Bolin, Gibson, Soli, Tieszen, Sohlt. Voting NAY: Stevens. Those EXCUSED: Peters, Conzet, Rozum.**

### **Public Testimony**

Mr. Kolbeck returned to the podium to discuss protection orders more thoroughly. Mr. Kolbeck said that when petitioning for a protection order, there only needs to be a preponderance of evidence shown to the judge. The criminal proof standard, “beyond a shadow of a doubt” does not apply when applying for protection orders. Therefore, the respondent can have a difficult time stopping the order.

Mr. Kolbeck said that a judge should be made aware of the effect a protection order may have on any custody battles that may be underway. He added that child support should not be considered when hearing a protection order request.

Representative Stevens said that it would be helpful if the same judge hearing the divorce case would also hear the request for a protection order. By doing that, many of these issues would be addressed.

Mr. Kolbeck also said that modifications need to be made to the protection order system, one of those modifications is that it can be removed if the petitioner so requests.

### **Committee Dialogue, Next Steps**



Senator Sohlt established subcommittees for the public hearings to be held around the state.

On August 21, there will be a public hearing at the Sioux Falls Main Library from 6 pm to 8 pm. The subcommittee will consist of Senator Sohlt, Representative Bolin and Representative Soli, with Representative Soli serving as the subcommittee chair.

On August 22, there will be a public hearing at the Aberdeen Ramkota from 6 pm to 8 pm. The subcommittee will consist of Senator Sohlt, Representative Bolin and Representative Gibson, with Representative Gibson serving as the subcommittee chair.

On August 26, there will be a public hearing at the Yankton Public Library from 5:15 pm to 7:15 pm. The subcommittee will consist of Representative Soli, Representative Bolin and Representative Stevens, with Representative Stevens serving as the subcommittee chair.

On August 27, there will be a public hearing at the Rapid City Main Library from 6 pm to 8 pm. The subcommittee will consist of Representative Conzet and Senator Tieszen, with Senator Tieszen serving as the subcommittee chair.

Legislative membership of the subcommittees is subject to change.

Protocol will be typed up and distributed to each of the members serving as subcommittee chairs prior to the meeting. Time limits for each speaker will have to be determined after seeing how many members of the public wish to address the subcommittee. Sign in sheets for each subcommittee meeting will be prepared by staff.

The next full study committee meeting will be on September 4, 2013, starting at 10 am in Pierre.

### **Adjourn**

**REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE BOLIN TO ADJOURN.  
The motion prevailed unanimously on a voice vote.**

The Committee adjourned at 4:00 PM.



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